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RECENT CASES.

ABATEMENT AND REVIVAL — SURVIVAL OF ACTION — TESTAMENTARY LIBEL. — A testator, leaving a small bequest to his niece, described her in the will as the illegitimate child of his brother. *Held*, that the niece may recover against the estate of the deceased in an action of libel. *Harris v. Nashville Trust Co.*, 162 S. W. 584 (Tenn.).

For discussion of the question thus raised, see page 666 of this issue.

ACCORD AND SATISFACTION — DISPUTED CLAIMS — RETENTION OF CHECK TENDERED AS PAYMENT IN FULL. — The defendant disputed one item in the plaintiff's claim for goods manufactured, but admitted the others, and sent a check for the admitted amount less two per cent. The check was stamped "This pays in full." The plaintiff cashed the check and sues for the balance of the account. *Held*, that the defendant is liable. *Dunn v. Lippard-Stewart Motor Car Co.*, 144 N. Y. Supp. 349 (Sup. Ct.).

The plaintiff sold and delivered to the defendant goods to the amount of \$80.03. The defendant claimed the right to return part of these and sent a check for the price of the rest, stating that it was in full settlement of the account. The plaintiff refused to take the goods back, but cashed the check and sued for the balance of his claim. *Held*, that the defendant is liable. *Whittaker Chain Tread Co. v. Standard Auto Supply Co.*, 103 N. E. 695 (Mass.).

The plaintiffs leased an engine to the defendant. The defendant claimed a deduction from the rent because the engine was not in repair when leased, and sent a check for less than the amount of the rent in full settlement. The plaintiffs cashed the check and sued for the balance of his claim. *Held*, that the defendant is not liable. *Neubacher v. Perry*, 103 N. E. 805. (Ind. App. Ct.).

Where a check for less than the amount of a disputed or unliquidated claim is given on condition that it be accepted in full satisfaction, if the creditor cashes it, although protesting that it is in part payment only, the claim will be discharged, and the creditor will not be permitted to say that he has used the check in violation of the condition upon which it was given. *Nassoy v. Tomlinson*, 148 N. Y. 326, 42 N. E. 715; *Sparks v. Spaulding Mfg. Co.*, 139 N. W. (Ia.) 1083. *Contra, Thayer v. Harbican*, 70 Wash. 278, 126 Pac. 625; *Day v. McLea*, 22 Q. B. D. 610. See *Hirachand Punamchand v. Temple*, [1911] 2 K. B. 330, 340, 342. The New York and Massachusetts cases represent an attempt to get away from this strict rule, which has been criticized as working a hardship on creditors. See 18 HARV. L. REV. 617. The theory of the courts is, that where part of a claim is admitted, payment only of that which is admitted can furnish no consideration for the discharge of the remainder. *Siegele v. Des Moines Mutual Hail Insurance Association*, 28 S. D. 142, 132 N. W. 697; *Thayer v. Harbican, supra*. But if the claim is entire, the debtor is not under two obligations, one certain and one uncertain, but under a single uncertain obligation. Therefore, the distinction taken by the courts seems unsound. *Treat v. Price*, 47 Neb. 875, 66 N. W. 834; *Neely v. Thompson*, 68 Kan. 193, 75 Pac. 117; *contra, Wedner v. Standard Life, etc. Co.*, 130 Wis. 10, 110 N. W. 246. To protect the creditor, however, the general rule should only apply where there is a *bona fide* dispute and where the tender is made upon a clear and unequivocal condition. *Canadian Fish Co. v. McShane*, 80 Neb. 551, 114 N. W. 594; *N. B. Borden & Co. v. Vinegar Bend Lumber Co.*, 62 So. 245 (Ala. Ct. App.).

BANKS AND BANKING — DEPOSITS — RIGHT TO APPLY DEPOSIT OF CONVERTED FUNDS TO ANTECEDENT DEBT OF DEPOSITOR. — W. was accustomed to ship hogs to his agent to sell, with instructions to deposit the proceeds with